

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

RONALD EDWARD DENARD #211519,)

Plaintiff,)

v.)

GEORGE PRAMSTALLER, et al.,)

Defendants.)

Case No. 2:06-cv-75

HON. ROBERT HOLMES BELL

**ORDER DENYING MOTION
FOR RECONSIDERATION**

Plaintiff, a prisoner incarcerated at the Muskegon Correctional Facility, filed a complaint pursuant to 42 U.S.C. § 1983. This court dismissed Plaintiff's complaint as failing to state a claim upon which relief may be granted on May 5, 2006. (Docket #11 and #12.) Plaintiff has filed a notice of appeal. However, he has also filed a motion to reconsider, which the court construes as a motion filed pursuant to Rule 59(e) of the Federal Rules of Civil Procedure. The court finds that the motion is timely. *See* FED. R. CIV. P. 59(e). Further, the court must address the motion despite the notice of appeal. *See* FED. R. APP. P. 4. After careful consideration, the court will deny the motion.

In the opinion dismissing Plaintiff's complaint, the court notes that his Eighth Amendment claims against the named Defendants were wholly conclusory and unsupported by any specific factual allegations. As noted in that opinion, the complaint merely alleged that Plaintiff was denied prescribed treatment by Defendants, which resulted in residual injuries that are now permanent. Plaintiff's complaint states that, as a result of Defendants' conduct, he now has to walk with a cane and suffers from severe back pain.

In his motion, Plaintiff claims that he filed a brief (docket #4) on May 5, 2006, which addresses the alleged deficiencies in his complaint. In addition, Plaintiff now offers copies of MDOC medical records in support of his claims. In Plaintiff's May 5, 2006, brief, he asserted that his claims were of a medical nature and would require expert testimony. Plaintiff also stated that he suffers from a physical handicap which makes it difficult to get out of bed some days, and that walking to the medical building for medication or to the dining hall for meals is even more difficult. Plaintiff also stated that he suffers from depression, anxiety and mood swings.

Plaintiff's medical records show that Plaintiff had a history of depression and substance abuse, and that Plaintiff had been treated for depression in the past with Paxil and counseling. The records further show that Plaintiff had a history of chronic pain in his right thigh and knee in May of 2000, and that he suffered an injury to his left knee while playing basketball in the Spring of 2002. None of the pleadings offered by Plaintiff show that he required some specific treatment and that the denial of such treatment resulted in injury. Moreover, the Sixth Circuit distinguishes "between cases where the complaint alleges a complete denial of medical care and those cases where the claim is that a prisoner received inadequate medical treatment." *Westlake v. Lucas*, 537 F.2d 857, 860 n. 5 (6th Cir. 1976). Where, as here, "a prisoner has received some medical attention and the dispute is over the adequacy of the treatment, federal courts are generally reluctant to second guess medical judgments and to constitutionalize claims which sound in state tort law." *Westlake v. Lucas*, 537 F.2d 857, 860 n.5 (6th Cir. 1976); *see also, Brock v. Crall*, No. 00-5914, 2001 WL 468169, at *2 (6th Cir. April 27, 2001); *Jones v. Martin*, 5 Fed. Appx. 434, *cert. denied*, 534 U.S. 833 (2001); *Williams v. Mattson*, No. 99-1796, 2000 WL 924145, at *1 (6th Cir. June 28, 2000); *Davis v. Ulep*, No. 97-2124, 1999 WL 98390, at *1 (6th Cir. Jan. 29, 1999); *Cain*

v. Huff, No. 96-1613, 1997 WL 377029, at * 4 (6th Cir. July 2, 1997); *Gabehart v. Chapleau*, No. 96-5050, 1997 WL 160322, at * 2 (6th Cir. April 4, 1997). Accordingly, the court will deny Plaintiff's motion as without merit. Therefore:

IT IS ORDERED that Plaintiff's motion for reconsideration (docket #13) be and hereby is DENIED.

Date: July 18, 2006

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
CHIEF UNITED STATES DISTRICT JUDGE